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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,142	05/07/2001	Anthony Keith Campbell	WCM.69.US	1038
7590 01/12/2004			EXAMINER	
Young & Thompson 745 South 23rd Street Second Floor Arlington, VA 22202			LU, FRANK WEI MIN	
			ART UNIT	PAPER NUMBER
			1634	

DATE MAILED: 01/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/831,142

Applicant(s)

CAMPBELL, ANTHONY KEITH

Examiner

Frank W Lu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 11-14, 18-26, 28 and 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-10, 15-17, 27 and 29 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-10, 15-17, 27, and 29 filed on October 10, 2003 is acknowledged. The traversal is on the ground(s) that "an examination of all the pending claims is believed that fails to impose an undue searching burden on the Examiner." since "applicant believes that the claim to the present invention are directed to the subject matter in which a search and examination can be completed within a narrow discipline."

The above arguments have been fully considered and have not been found persuasive toward the withdrawal of the restriction requirement nor persuasive toward the relaxation of same such that Groups I, II, and III will be examined together. Since this case is a 371 case, searching burden argued by applicant is not the reason for the restriction. The restriction is based on "the product of Group II does not escape the prior art" (see previous office action). Therefore, the requirement for Groups II and III is still deemed proper and is made FINAL.

2. After carefully reviewed the restriction made by previous examiner and the claims in Group I, additional restrictions are required as following:

1) Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group IA, claims 1-10, 15-17, and 27, drawn to an isolated, purified recombinant nucleic acid sequence (claims 1-5), and an isolated, purified or recombinant construct (claims 6-10), a

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cell, plasmid, virus or live organism (claim 15), a vector (claim 16), a host cell (claim 17), and the use of a sequence or a protein (claim 27).

Group IB, claims 29, drawn to a method for obtaining a substantially homologous source of apopholasin.

The inventions listed as Groups IA and IB do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The claims as drawn are related to each other because of the product in claim 1, an isolated, purified recombinant nucleic acid sequence. Since an isolated, purified recombinant nucleic acid sequence recited in (b) of claim 1 is known in the art, (for example, see Baba et al., (Anal. Chem., 64, 1920-1925, 1992, see poly T in page 1922), Groups IA and IB are no longer linked by a special technical feature, because, by definition, the special technical feature must distinguish over the prior art. Without the special technical feature, the restriction for claims 1-10, 15-17, and 29 are proper.

2) Sequence Election Requirement

Group IA detailed above reads on patentably distinct SEQ ID Numbers. Each sequence is patentably distinct because the sequences are structurally unrelated sequences, and a further restriction is applied. Therefore, applicant must further elect a single SEQ ID NO. (See MPEP 803.04). Applicant is advised that examination will be restricted to only elected SEQ ID NO. and should not to be construed as a species election.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

3. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CAR § 1.6(d)). The CM Fax Center number is either (703) 308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Lu, Ph.D., whose telephone number is (703) 305-1270 (before January 13, 2004) or 571-272-0746 (after January 13, 2004). The examiner can normally be reached on Monday-Friday from 9 A.M. to 5 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion, can be reached on (703) 308-1119.

Any inquiry of a general nature or relating to the status of this application should be directed to the Chemical Matrix receptionist whose telephone number is (703) 308-0196.



Frank Lu
PSA
January 7, 2003